

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA \* CRIMINAL NO. H-13-363  
\*  
VERSUS \* Houston, Texas  
\* June 19, 2019  
JAMES WAYNE HAM \* 10:00 a.m.

PRETRIAL CONFERENCE  
BEFORE THE HONORABLE LYNN N. HUGHES  
UNITED STATES DISTRICT JUDGE

For the Government:

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Ms. Erin Michelle Epley  
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Proceedings recorded by mechanical stenography, produced by  
computer-aided transcription.

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2

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1 THE COURT: Ms. Epley, are you going to take the  
2 lead or does the best person?

3 MS. EPLEY: I am doing the trial team, Your Honor,  
4 but not as lead.

5 THE COURT: Would you like to be the lead this  
6 morning or would you like her to do it or somebody?

7 MS. STOTTS: I think she is probably going to pass  
8 that off to me, Your Honor.

9 THE COURT: That's fine. I am just trying to give  
10 you a break.

11 MS. EPLEY: Thank you, Your Honor.

12 THE COURT: If the medical evidence or physiological  
13 evidence that the government now has indicates that it's  
14 likely that the victim had died before the car fire, why  
15 don't we just stipulate to that?

16 MS. STOTTS: Your Honor, the ME is going to actually  
17 testify about other areas of her scope in this case with  
18 regards to the decedent and what she saw, what she said. It  
19 would be better for us to have that presented to the jury.

20 As we told you before, we are standing by the  
21 fact that she is not going to say that she believes she was  
22 alive at the time. What you are going to hear is one  
23 question basically, she can explain why she believes she was  
24 not alive and how she does believe that the death occurred  
25 prior to the fire. And that's why we would ask not to

1 stipulate to that evidence. It's not going to be a long  
2 presentation or anything like that, but since the ME is going  
3 to be here anyway about the --

4 THE COURT: I like data, but since this is not a  
5 point in controversy and is reasonably gruesome --

6 MS. STOTTS: May I respond?

7 THE COURT: Yes, ma'am, of course.

8 MS. STOTTS: Because this is a death penalty case  
9 that we are talking about here, part of our aggravating  
10 factors are how this death occurred and the heinousness of  
11 the death, and we have to prove that to this jury. And  
12 although we are not going to go into it extensively --

13 THE COURT: But if she was already dead from the  
14 fire, the fire does not contribute to the heinousity.

15 MS. STOTTS: I disagree. I think it doesn't  
16 attribute to the heinousity of the murder. It does to the  
17 coverup and what you do to someone who is now killed, you  
18 drive their truck to another location and set it on fire.

19 THE COURT: But isn't it common for people to  
20 dispose of a body?

21 MS. STOTTS: Yes, absolutely.

22 THE COURT: And I suspect that Mr. Ham's apparent  
23 selection is common?

24 MS. STOTTS: I would agree with that.  
25

1 THE COURT: A couple of hundred years of reading  
2 newspapers -- I am not that old; it just seems that long when  
3 you read the newspapers -- that that seems to be a common  
4 selection among the options.

5 MS. STOTTS: I agree.

6 THE COURT: Ms. Stevens.

7 MS. STEVENS: Good morning, Your Honor.

8 THE COURT: Does Mr. Ham want to get into that?

9 MS. STEVENS: No, Your Honor.

10 THE COURT: I will think about it. But he is  
11 charged with murder, and the murder, by the government's own  
12 witness, occurred before the fire. So while that's  
13 unpleasant, there are other forms of body disposal. Almost  
14 any of them, they don't take those to a funeral home and have  
15 them disposed of.

16 MS. STOTTS: Your Honor, the evidence of the fire is  
17 going to be a part of the case.

18 The stipulation that I believe Ms. Stevens is  
19 talking about is what the ME will stipulate or whether we  
20 will stipulate that the ME will not testify or would agree  
21 that Ms. Youngblood was killed prior to the fire.

22 It's a small point. We would like not to  
23 stipulate to that point. We would like for her to be able to  
24 say, for these reasons we believe that she was killed in this  
25 manner prior to the fire.

1 THE COURT: She can testify about how she was  
2 killed. And so, her testimony apparently is she was killed  
3 by a gunshot to the head. Is that controversial so far?

4 MS. STEVENS: May I approach the podium, Your Honor?  
5 Actually that is.

6 Your Honor, on the first point as to the  
7 stipulation, you and I talked about this very clearly, made a  
8 record.

9 The Court said to Mr. Khandelwal: "Though  
10 you're making the claim that she was dead when she was  
11 burned?

12 Yes, Your Honor."

13 You followed up. "So the claim is that she was  
14 dead when burned?

15 Yes, Your Honor."

16 MS. STEVENS: Despite that, they refused to  
17 stipulate.

18 We do not wish to get into this evidence.

19 THE COURT: The government has a better lawyer now.

20 MS. STEVENS: But, Your Honor, if the government is  
21 now claiming she was likely --

22 THE COURT: Sit up. Mr. Khandelwal, sit up. This  
23 is not the dorm lounge.

24 MS. STEVENS: Sorry, Your Honor.

25 That she was likely, that's a different issue.

1 That is not the stipulation that I thought we had ironed out  
2 last time we were in the courtroom. And in the absence of  
3 that we do need to examine the evidence.

4 Now if they will be reasonable and stipulate,  
5 as we discussed on the record and they said they would, we do  
6 not need to get into this.

7 MS. STOTTS: Your Honor, what we said on the record  
8 is still the same. She is going to say she was dead prior to  
9 the fire. Whether we stipulate to that or not, the evidence  
10 isn't going to change.

11 She is not going to come in here and say she  
12 was alive when this fire took place. She is not going to say  
13 that. She hasn't ever said that. She is not going to change  
14 her mind and say that.

15 MS. STEVENS: Your Honor, I am sorry to be so  
16 confused, but here's their answer: "We do not need to  
17 stipulate to this. The medical examiner will testify at  
18 trial that the decedent was likely not alive at the time the  
19 defendant set the car on fire."

20 That is an entirely different question. It is  
21 not a small point.

22 THE COURT: You mean between dead and likely?

23 MS. STEVENS: And likely, right.

24 The jury can say, well, she likely was. She  
25 may not have been.

1                   A stipulation that she was dead before burned,  
2 the government has the burden of proof. It sounds like  
3 they're attempting to use the fire as an aggravating factor  
4 in support of a claim for the death penalty. And so it is  
5 very important that if they are not going to --

6                   THE COURT: I'm going to worry about that  
7 aggravation stuff once I have something to sentence.

8                   MS. STEVENS: It is also relevant, as you point out,  
9 Your Honor, to the guilt phase. Leaving doubt in the jurors'  
10 minds about likely dead before burned may have them back in  
11 the jury room discussing that she may have been alive and  
12 burning to death, and that's a different question.

13                   THE COURT: Well, if it's likely that she had died  
14 from the gunshot wound and the evidence seems fairly clear.

15                   But if you die of a heart attack after you're  
16 shot, does that count as being killed by the gunshot?

17                   MS. STEVENS: No, Your Honor.

18                   THE COURT: I mean, I don't know. I'm just,  
19 fortunately --

20                   MS. STEVENS: There can be but one cause of death  
21 for all of us.

22                   THE COURT: My favorite description was the Dallas  
23 coroner reported that Lee Harvey Oswald died of cardiac  
24 arrest. The bullet holes in four major organs apparently  
25 didn't strike them as having any impact on it. We all die of



1 cardiac arrest.

2 MS. STEVENS: True, Your Honor.

3 THE COURT: Maybe they should have a rubber stamp.

4 For you young people, he was the assassin of  
5 President Kennedy, apparently, since he was never tried; but  
6 I don't think there is much doubt about that, although people  
7 have made a fortune selling books coming up with all kinds of  
8 strange -- and movies.

9 I don't know what a recut is. One of the items  
10 is H&E stained recut.

11 MS. STEVENS: Your Honor, I am not a pathologist,  
12 but my understanding is they take tissue samples and they  
13 slice them very thinly, place them between two glass slides  
14 and a later pathologist can look at those tissue slides to  
15 see what's important to a medical examiner.

16 THE COURT: Okay. Such as the intra-pathologist.

17 MS. STEVENS: It is intra-pathologist language. And  
18 so he made a specific request to us: This is what I need to  
19 examine. We passed that along to them.

20 THE COURT: And a DICOM file. DICOM in all capital  
21 letters, Fred.

22 MS. STEVENS: Your Honor, I believe that is an  
23 electronic form. So a full set of radiographs. But it's  
24 reduced to an electronic, like a thumb drive, some type of  
25 file that he can later open on his computer. So that first

1 one is not actual biological material.

2 The second, the recut slides, would contain  
3 biological material.

4 THE COURT: Where does your pathologist reside?

5 MS. STEVENS: He is in Minnesota, and his address is  
6 on is the last page of our motion.

7 THE COURT: I wasn't paying attention to that until  
8 the transportation issue came up then.

9 MS. STEVENS: Now another alternative, Your Honor,  
10 is we could have --

11 THE COURT: The grandfather for whom I was named was  
12 from Minnesota. Can I recuse? Just a thought.

13 MS. STEVENS: My grandmother was from Minnesota.  
14 Can I recuse, Your Honor?

15 THE COURT: You will have to do all three roles.

16 Let me think about that.

17 Which medical examiner did this, Harris County?

18 MS. STOTTS: It was Harris County. She is now in  
19 Montgomery County but still a medical examiner.

20 THE COURT: I just wondered about the institution.

21 MS. STOTTS: It's Harris County, Your Honor.

22 THE COURT: Let me think about that for a minute.  
23 So I wouldn't have gotten comfortable.

24 MS. STEVENS: I was letting the Court think about  
25 that one.

1 THE COURT: Despite my views of the death penalty  
2 determination process, I don't understand how that has  
3 anything to do with a trial of the acts of the crime.

4 MS. STEVENS: Well, it's about manner of death, Your  
5 Honor, what actually killed her. Was it a gunshot or did she  
6 die in the fire? And we have to examine that evidence to be  
7 effective.

8 THE COURT: No. The conversation between Ruben  
9 Perez and the deputy assistant or, apparently, according to  
10 some, that they all sat around and talked to the attorney  
11 general, the decision on the death penalty is none of those  
12 people knew anything except hearsay. They're a bunch of  
13 government lawyers getting together in a conference room in  
14 D.C. at great expense.

15 MS. STEVENS: I was still talking about the  
16 pathology evidence. You moved on to the second motion then.  
17 I'm sorry, Your Honor.

18 THE COURT: No. I should have announced.

19 MS. STEVENS: I was still thinking.

20 THE COURT: Act 2.

21 MS. STEVENS: All right. Act 2. So it's Docket  
22 Entry 129, Your Honor.

23 THE COURT: That's what mine says on it, yes, ma'am.

24 MS. STEVENS: Yes, Your Honor.

25 To quote the brief, "wise observers have long

1 understood that the appearance of justice is as important as  
2 its reality."

3 THE COURT: No, it's not. Justice comes first. If  
4 you reach justice in a way that say is not public, then it's  
5 not justice.

6 MS. STEVENS: Yes, Your Honor, yes, sir.

7 THE COURT: That aphorism could be used by devious  
8 government lawyers to say, we skipped the justice. We'll  
9 just make it look like justice.

10 MS. STEVENS: Oh, to be sure, both are required,  
11 both are required, Your Honor, I agree with the Court.

12 The DOJ prosecutor here -- and bear with me,  
13 Your Honor, this may take a little explaining -- faced  
14 allegations of serious governmental conduct, particularly  
15 hiding Brady evidence, in a separate pending capital case,  
16 U.S. versus Andrew Rogers, and findings of misconduct were  
17 found. The Court found that his assurances that he did  
18 provide Brady "rang hollow in that case." He was ordered to  
19 be deposed, and the government moved to keep that sealed.

20 And one day before he was scheduled to publicly  
21 testify, the government removed the hammer of death, allowed  
22 the entry of a plea and the misconduct there was quieted.

23 In this case, Your Honor, Mr. Peterson is  
24 practicing law and signing pleadings in Texas while it  
25 appears that his bar license has been administratively

1 suspended for failure to pay bar dues by the Texas State Bar.  
2 The rules of this Court --

3 THE COURT: No. I notice those things.

4 MS. STEVENS: Yes, Your Honor.

5 And the Texas Disciplinary Rules of  
6 Professional Conduct speak directly to this. Rule 8.4A, "a  
7 lawyer shall not" -- forgive me for being nervous, Your  
8 Honor. I haven't had to do this before in 27 years -- "shall  
9 not engage in the practice of law when the lawyer's license  
10 is suspended, including but not limited to situations where a  
11 lawyer's right to practice has been administratively  
12 suspended for failure to timely pay required fees or  
13 assessments."

14 Now, in this case we also know, Your Honor,  
15 that the great State of Texas requires more of a prosecutor  
16 than Brady. Rule 8.4 A1 and A11 speak so to his license, but  
17 Texas Disciplinary Rule of Professional Conduct 3.09 D say  
18 that his discovery obligations exceed those commanded by  
19 Brady.

20 Now, the government claims first that our  
21 motion should be denied because the discovery that we are  
22 seeking does not bear on guilt, innocence or punishment but  
23 rather the processes by which death was authorized in this  
24 case.

25 We go beyond that in our request, Your Honor.

1 We request the entire file of Mr. Peterson, the entire file  
2 of Mr. Mellin, which should include law enforcement reports,  
3 handwritten notes, prosecutor handwritten notes, much of  
4 which may bear both on guilt/innocence and the penalty in  
5 this case.

6 And if I may take a moment to explain and hand  
7 up, as it's a short one, Your Honor, it took me a while to  
8 find this, but a four-page order entered by the Court in the  
9 Rogers case which explains Mr. Peterson's conduct there with  
10 regard to interviewing mental health witnesses. And we have  
11 some similar issues I would like to raise with the Court in  
12 this case, if I might approach.

13 THE COURT: First of all, let's assume I shoot  
14 Peterson this morning.

15 MS. STEVENS: Yes, Your Honor.

16 THE COURT: They seem to have seven or eight other  
17 lawyers. And do we suspect there is exculpatory data that  
18 are not disclosed?

19 MS. STEVENS: I do not know the answer to that  
20 question, Your Honor, because we don't have the discovery.  
21 But I have reasons to suspect, based on his pattern of  
22 behavior at the same time that the Ham case was pending and  
23 the fact that no other DOJ lawyer has apparently been  
24 assigned to Ham. Mr. Peterson has been handling it since  
25 2016, and Mr. Mellin before him.

1                   What we do know is that their colleague and  
2 fellow DOJ prosecutor, Amanda Haines, swore that in two  
3 separate capital cases ending at the same time they were  
4 involved in the Ham case, they hid Brady evidence, that Mr.  
5 Peterson took handwritten notes and destroyed them and lied  
6 about it or he failed to take notes altogether and he failed  
7 to keep a record of what he showed a mental health doctor.

8                   The court order that I handed up in Rogers,  
9 Your Honor, talks about a local prosecutor submitted a  
10 memorandum in which the U.S. attorney in Rogers recommended  
11 that they not seek the death penalty as to Andrew Rogers.  
12 That position was reversed later in 2015.

13                   And what happened in the interim was that Mr.  
14 Peterson interviewed the chief psychologist, Dr. Steven  
15 Eckert, at FCC Terre Haute. What the memo that was later  
16 turned over in discovery to the Rogers court after the  
17 government represented there was no Brady evidence to be  
18 turned over, there was nothing that they were hiding.

19                   This document surfaced, and in this document  
20 AUSA James Warden said that he had interviewed the same  
21 psychologist who said to him BOP, the Bureau of Prisons, was  
22 not as responsive to Rogers' mental health issues as it could  
23 have been and that certain additional intervention could have  
24 occurred prior to the murder, and further, the Bureau of  
25 Prisons might be embarrassed as a result of its incomplete

1 response to Rogers' mental health issues.

2                   When this document surfaced and AUSA Warden  
3 explained the reason for the reversal of the local U.S.  
4 attorney's position and now that they were seeking death, Mr.  
5 Peterson had been in speaking with Mr. Eckert, and the chief  
6 psychologist now was claiming the defendant did not manifest  
7 symptoms of any mental health malady according to the  
8 government, according to the government. And the Court said,  
9 I find that your assurances that you have complied with Brady  
10 ring hollow.

11                   Your Honor, we don't know. AUSA Warden and the  
12 chief psychologist Eckert were deposed in Rogers, as was Mr.  
13 Peterson and Ms. Haines. Those are sealed. The case has  
14 been closed. The docket was closed. So we're asking --

15                   THE COURT: Why is the docket closed?

16                   MS. STEVENS: I don't know, Your Honor. We searched  
17 it. We searched it this morning before coming here to see if  
18 any of these pleadings have been unsealed, and they have not.

19                   THE COURT: Do we know why?

20                   MS. STOTTS: I don't know why, Your Honor. I have  
21 people here who may know why, but I definitely don't know  
22 why.

23                   MS. STEVENS: And so, as the Court may recall, Mr.  
24 Ham was sent to Butner for a competency evaluation on motion  
25 by his lawyers, Ms. Scardino and Mr. Morrow at the time; and



1 we found a reference in the discovery that Mr. Peterson hand  
2 delivered documents to Butner. We don't have a record of  
3 what was said when he hand delivered those documents.

4 THE COURT: Is that right? I am asking you.

5 MS. STOTTS: It could be correct. I need to check  
6 with Mr. Peterson. But I know that there were documents  
7 taken to Butner. I don't know if he hand delivered them.

8 THE COURT: Well, see, you're talking like a  
9 government lawyer.

10 Documents were delivered?

11 MS. STEVENS: Yes, Your Honor.

12 THE COURT: Okay. What were they?

13 MS. STOTTS: Without looking in the big file, Your  
14 Honor, which I could do, I am not sure exactly what was given  
15 to Butner at that time, at the time she is talking about.

16 THE COURT: And if they're all just in a pile, how  
17 would some person like you know that they were delivered or  
18 not delivered at the time or before or any other time?

19 MS. STOTTS: I have the same discovery information  
20 that Ms. Stevens does. I am just not clear on whether the  
21 information she is talking about was hand delivered to  
22 Butner.

23 Mr. Peterson is here. He can tell me whether  
24 he hand delivered it. I don't want to give the Court wrong  
25 information.

1 THE COURT: No. I understand.

2 MS. STEVENS: The brief information we have, Your  
3 Honor, is that on December 16, 2015, Mr. Peterson hand  
4 delivered records to a Dr. Wadsworth at Butner. This was one  
5 month after he was speaking with chief psychologist Eckert in  
6 the Rogers case at FCC Terre Haute. So we have this conduct,  
7 Your Honor. We can point to that in support our discovery  
8 request.

9 Further, we know that in July of 2014 Ms.  
10 Scardino appeared at main justice with her mitigation  
11 specialist Mona Carmoni. It is clear they are both female,  
12 they appeared under a Kevin Carlisle-led DOJ hearing, and Mr.  
13 Carlisle was accused at various points of running an office  
14 filled with various sexually inappropriate conduct going on.

15 But aside from that, what's more important --

16 THE COURT: Ms. Scardino is a capable, responsible  
17 woman who can take care of anybody who applied inappropriate  
18 standards to her.

19 MS. STEVENS: I have no doubt that she is a capable,  
20 strong woman. And she argued this at main justice in that  
21 atmosphere.

22 But what's more important, Your Honor, is that  
23 Amanda Haines, in her sworn declaration, said that the Brady  
24 misconduct by Mr. Peterson and Mr. Mellin both that she found  
25 in the other capital cases she reported to Mr. Carlisle in

1 this general time frame. He instituted no investigation and  
2 did nothing. He chaired the committee that held the  
3 authorization hearing in the Ham case.

4 In October Attorney General Holder authorized  
5 the death penalty. The records of this Court reflect that  
6 on October 21 Steven Mellin appeared in the courtroom minutes  
7 so was apparently handling this case on behalf of DOJ. And  
8 Peterson appears in 2016, signing the superseding indictment,  
9 entering an appearance in August of 2016 and signing various  
10 notices of intent, all while apparently his Texas bar  
11 licensed is administratively suspended in violation of the  
12 rules of this Court.

13 According to Mr. Peterson, he became barred in  
14 Virginia and after a period of years abandoned his Texas bar  
15 license. According to him, the printout from the Texas bar  
16 reflects that abandonment, not discipline. Respectfully,  
17 Your Honor, the Texas State Bar rules say otherwise; and so,  
18 he denies what we can plainly see.

19 THE COURT: Well, if he didn't have or not have is  
20 kind of a clear dichotomy. You have a license or you don't.

21 MS. STEVENS: Yes.

22 THE COURT: If it's suspended, you don't have one.

23 MS. STEVENS: I agree, Your Honor. And he  
24 apparently is taking the position that because he holds a  
25 valid Virginia license, it doesn't matter that his Texas bar

1 license is suspended; but that's not what the rules of ethics  
2 or the rules of this Court say. They don't forgive you if  
3 you hold a license in another state that you haven't paid  
4 your bar dues since 1995.

5 Now, one question --

6 THE COURT: I am not opposed to Virginia lawyers.  
7 Some of my best friends, like Jimmy Madison and those people,  
8 even they got a bar license by saying I'm a lawyer.

9 MS. STEVENS: Yes, sir. And I understand you went  
10 to the University of Virginia.

11 THE COURT: I did. I finally had to clean up my  
12 U.T. education.

13 MS. STEVENS: One question was whether he reported  
14 the Texas suspension to Virginia. I don't know. I also  
15 don't know that that's relevant. The fact is, he is  
16 suspended and has signed pleadings here in this case.

17 THE COURT: Rather more significant is other  
18 behavior than --

19 MS. STEVENS: It is rather more significant, Your  
20 Honor. And it points to the need for the granting of  
21 discovery of his complete file, Mr. Mellin's complete file.  
22 They apparently lacked supervision for what Ms. Haines  
23 reported as violations of Brady.

24 And so that is the basis for our motion, Your  
25 Honor. The discovery that we are seeking could well show

1 Brady evidence.

2 THE COURT: The justice department, after a thorough  
3 investigation, decided that the local U.S. attorney counsel  
4 in the Senator Stevens lynching used poor judgment. That was  
5 the sole discipline, other than the one assistant who killed  
6 himself, which is some sort of confession.

7 In Edwin Wilson versus United States, the  
8 evidence was that the CIA gave the justice department an  
9 affidavit about the absence of contacts by the defendant with  
10 the agency after he had left being an active officer. The  
11 next day the Assistant Attorney General for Criminal, since  
12 that's the highest working lawyer, received a letter from the  
13 general counsel at CIA and not in some bureaucratic,  
14 convoluted thing, I think it's two sentences, said, you  
15 received an affidavit from so in so and so in so yesterday.  
16 You cannot use it. It is perjury.

17 And so the Assistant Attorney General and three  
18 or four more people, including the one from the office here,  
19 met for 40 minutes or so and decided, well, we really  
20 shouldn't use it, but we'll just paper the file. And Mr.  
21 Wilson spent 17 years in prison before I appointed a lawyer  
22 who on his habeas uncovered 126 documented contacts between  
23 him and the CIA.

24 Neither lawyer, neither trial lawyer was  
25 punished. It was hard to punish the former Assistant

1 Attorney General because he was a District Judge at that  
2 point, and actually so was the former head of the CIA, who  
3 did everything perfectly.

4 They're not inclined to admit their errors or  
5 do anything about it once they get them.

6 MS. STEVENS: Or unseal that docket in Rogers or let  
7 us read the deposition.

8 I believe we require this Court's assistance,  
9 Your Honor. We require this Court's assistance to provide us  
10 the discovery. It is not right for them to say the defense  
11 can't prove we engaged in any misconduct. There is every  
12 indication of prior Brady violations. Texas requires the  
13 production of more than Brady. We have indications that we  
14 are missing things.

15 THE COURT: I am not sure that procedural rule  
16 applies to me, but I have actually read the Constitution, and  
17 hiding exculpatory evidence seems -- I bet you even one of  
18 those funny-dressed king's judges would have come to the  
19 conclusion that it's not cricket, I think would be the legal  
20 term.

21 MS. STEVENS: Even assuming it does not, Your Honor,  
22 and we believe that it does, but assuming that it does not,  
23 they are still bound by Brady, by the Sixth Amendment, the  
24 Eighth Amendment, Giglio.

25 We have indications that we are missing

1 evidence, and we need this Court's help in granting the  
2 discovery. It is not right just to say they can't prove it  
3 and deny us the evidence that it takes to prove it.

4           We have not yet moved for sanctions, it's true,  
5 because we need the evidence first. And then we will see  
6 what motions may follow. And producing their complete files,  
7 their handwritten notes, their interview notes is necessary;  
8 and it's not just about the authorization of this case,  
9 though to be sure it includes that, it includes their  
10 subsequent failures and refusals to take a plea, to  
11 de-authorize, witness interviews are going on. We are in the  
12 field conducting our interviews and have heard from witnesses  
13 that the government has conducted them, and we have no notes  
14 of those contacts.

15           And so we believe we are entitled to their  
16 files, Your Honor, if this Court would assist us and grant  
17 the discovery and at least allow us to read what was deposed  
18 and put into evidence in the Rogers case that the government  
19 was able to quiet and close by allowing him finally to plead  
20 one day before the evidentiary hearing. It's not right.

21           MS. STOTTS: Your Honor, the allegations in the  
22 Rogers case are separate and apart from anything that has  
23 happened during the Ham case. Those allegations have been  
24 not substantiated at this point; and although I don't  
25 condone, obviously, any violation of Brady or anything else,

1 there is nothing here in this case to show that anything has  
2 been done at all.

3 THE COURT: Why haven't the records of the  
4 government's interviews of witnesses she mentioned been  
5 produced?

6 MS. STOTTS: Your Honor, anything that is not work  
7 product has been provided to --

8 THE COURT: But see, the problem is, I don't know.

9 MS. STOTTS: The handwritten notes from the agents  
10 have been provided, handwritten notes from the deputies that  
11 were out on the scene have been provided, from the Texas  
12 Rangers have been provided.

13 The only notes that, if they exist, have not  
14 been provided are specific notes taken by prosecutors. I  
15 don't even know if those exist. I will tell you now, I have  
16 them. So I don't know if they exist from other people in  
17 this case, but they would be work product. If there is  
18 anything Brady that comes out of a conversation, obviously --

19 THE COURT: I don't know that they're work product  
20 when their existence is hidden.

21 MS. STOTTS: Your Honor, they're work product unless  
22 they have something exculpatory that has come out of them.  
23 If that occurs, then obviously they are turned over to  
24 defense counsel.

25 THE COURT: But that puts the defendant in the



1 position of having to prove the government's got evidence.

2 The duty rests with the government.

3 MS. STOTTS: I agree. The duty to provide all Brady  
4 material --

5 THE COURT: No.

6 MS. STOTTS: -- rests with the government and all  
7 evidence.

8 THE COURT: To do justice.

9 MS. STOTTS: I agree.

10 THE COURT: It's called the justice department for a  
11 reason.

12 MS. STOTTS: I agree.

13 THE COURT: It's not called the California Shyster  
14 Agency. Sort of sorry I used California. Bad as it is, it's  
15 not D.C.

16 And the point of the Rogers case was not that  
17 the facts of that case in terms of the offense are relevant,  
18 but that the government process is tainted by character that  
19 doesn't change from case to case. The lawyers in Ohio or  
20 wherever it was that tried Stevens had probably done the same  
21 thing in thousands of cases. Just an honest FBI agent in  
22 those cases didn't go to the Judge.

23 MS. STEVENS: That is our position, Your Honor.

24 THE COURT: Pardon?

25 MS. STEVENS: That is our position.

1 THE COURT: All right. I am thinking.

2 What else?

3 MS. STEVENS: That's all for now, Your Honor. I  
4 think we should let you think, unless you have further  
5 questions of me.

6 THE COURT: Not at the moment.

7 MS. STEVENS: Yes, sir.

8 Your Honor, may I introduce Ms. Brandi Riddle.  
9 She is our paralegal, and I'm sorry for neglecting to do so  
10 when we first opened.

11 THE COURT: I am glad she is introducing you because  
12 I like to meet the people who do all the work.

13 MS. STEVENS: You can see the notebooks in front of  
14 her. She keeps us straight, Your Honor.

15 THE COURT: Thank you for doing it because they're  
16 all a mess now, but think what they would be without  
17 paralegals and secretaries.

18 MS. STEVENS: True.

19 THE COURT: And interns who work for free. They're  
20 great. Thanks.

21 MS. STEVENS: Thank you.

22 THE COURT: Let's take a -- you may need to  
23 confer -- 15 minutes.

24 MS. STOTTS: Thank you, Your Honor.

25 (Recess taken)

1 THE COURT: Ms. Stevens, explain to me again about  
2 the interviews.

3 MS. STEVENS: Yes, Your Honor. What we do know  
4 about the interviews --

5 THE COURT: There was a please in there somewhere.  
6 You just didn't hear it.

7 MS. STEVENS: Oh, that's all right. Thank you.

8 So we know two things about the interviews in  
9 this particular case.

10 THE COURT: Get a little closer to the microphone.

11 MS. STEVENS: Yes, Your Honor. I'm sorry.

12 That Mr. Peterson hand delivered documents in  
13 December of 2015 to Federal Medical Center Butner and a  
14 psychologist there. And our team, of course, is out trying  
15 to interview the witnesses; and some of the witnesses that we  
16 have interviewed have told us that they were interviewed by  
17 federal agents, and we have no reports of those.

18 And I say that not because we can be exhaustive  
19 in that. I don't know who all they have interviewed, and we  
20 don't have notes. But the fact that we are hearing it from  
21 anyone is troublesome. So some of the witnesses specifically  
22 told us that they were interviewed, they were interviewed  
23 downtown in a federal building and that we have no notes of  
24 those.

25 THE COURT: Downtown here?

1 MS. STEVENS: Yes. One interview says on Louisiana  
2 Street.

3 THE COURT: That's close enough for a civilian.

4 MS. STEVENS: And then another thing we noticed in  
5 the transcript where Postal Inspector Boyden is interviewing  
6 our client, Mr. Ham, he says that that morning he did a  
7 lengthy interview of one Stephanie Kent, and we don't have  
8 the interview summary of that.

9 And so I am not trying to list everything we  
10 don't know, Your Honor, because we don't know how many  
11 people, but we are receiving indications that there are items  
12 we don't have.

13 THE COURT: Okay.

14 Donald Rumsfeld said, the problem's not what we  
15 know we don't know, it's what we don't know we don't know.

16 MS. STEVENS: And the older I get the more I know  
17 there's things we don't know, but we are hearing back that --

18 THE COURT: It's always been large. The size of the  
19 unknowns hasn't changed; you've changed.

20 MS. STEVENS: I have gotten older, Your Honor.

21 So we are hearing that interviews had been  
22 conducted that we don't have.

23 THE COURT: Thank you.

24 MS. STEVENS: Yes, sir.

25 THE COURT: Do we have a list of what Mr. Peterson

1 has done in this case? I mean, he has interviewed, meetings  
2 he attended, just the data, the facts of an interview and  
3 some identification of who the person is?

4 MS. STOTTS: I do not have a list of who he may have  
5 interviewed. I don't believe there are any interviews that  
6 he conducted himself. If there were meetings that he was  
7 present at, there should be notes either by the agent or by  
8 one of the prosecutors with regards to who was there, I would  
9 think.

10 THE COURT: Would he perhaps have had the authority  
11 to direct agents where to go and whom to ask?

12 MS. STOTTS: Could he have? I guess that's a  
13 possibility.

14 THE COURT: Well, have most the witness interviews  
15 been conducted by your office or your office directing the  
16 agents?

17 MS. STOTTS: Typically our witness interviews  
18 pretrial, which is where we're at, obviously are the agents  
19 and the prosecutors talking to the witnesses. We are getting  
20 ready for trial. I think the Court would be disappointed if  
21 we didn't talk to our witnesses. That's where we're at.  
22 But, yes, that has occurred.

23 THE COURT: Disappointed or somewhat worse.

24 MS. STOTTS: Right.

25 THE COURT: I want a narrative of Peterson's

1 contributions revealing nothing that is work product or top  
2 secret otherwise, and I want everything about the delivery of  
3 the documents and the interviews at Butner and everything  
4 about the interviews of the witnesses that Ms. Stevens  
5 identified or will identify if it's not.

6 MS. STOTTS: With regard to Mr. Peterson?

7 THE COURT: No. About -- I don't care whether  
8 Peterson did it or you did it, if you took documents to  
9 Butner, and what they were.

10 MS. STOTTS: I can assure you that that wasn't me.  
11 That was Mr. Peterson.

12 THE COURT: I can tell because they wouldn't let you  
13 out if you went in.

14 And I don't want to get into the Rogers case.  
15 The facts about it that I do know do not shed light favorably  
16 on the justice department representatives and their  
17 supervisors. The supervisors always want to blame the online  
18 troops who weren't given the information to start with.

19 We do have that rule; but someone who has a  
20 license from any other American jurisdiction could perhaps be  
21 admitted for this case alone, but it requires disclosure of  
22 whatever happened with the Texas license.

23 It seems to me that someone who no longer  
24 thinks she needs a Texas license -- actually one of my  
25 colleagues who is no longer with us, he quit paying his bar

1 dues and just resigned. That piece of paper in chambers from  
2 the President makes, I guess, a higher ranking than the state  
3 bar. They were confused by the concepts, but I have kept up  
4 until I got so old they didn't want my money anymore.

5 I would write the state bar and say, I'm  
6 practicing with the government in Washington and I am going  
7 to rely on that license from now on, but thank you very much  
8 so you didn't leave this question about how your licenses  
9 came or went.

10 We've had a President who lost his license, and  
11 the record is sealed on that, too.

12 At the moment until I have the other data, all  
13 I will say is I think America could probably find a better  
14 representative of its principles and ideals than Mr.  
15 Peterson.

16 I am going to run down the written list to make  
17 sure I didn't omit something.

18 On Mr. Ham's list, number one is redact what  
19 you need to, but we need Peterson's involvement in the case.  
20 All the meetings, all the conferences, with whom, and you can  
21 do, I'll assume, something important.

22 MS. STOTTS: Yes, Your Honor.

23 THE COURT: Two, about all his emails, or you might  
24 look at them, but not all of them.

25 And I do think he should have -- I think it's

1 included in the first one, but authorizations or requests for  
2 authorizations of investigations except No. 3 should be  
3 included in 1.

4 What's Mellin's case against Ham?

5 MS. STEVENS: Before Mr. Peterson began handling  
6 this case somewhere in 2015, we believe Mr. Mellin was  
7 handling the Ham case on behalf of the Department of Justice;  
8 and he appeared on the record in 2014 in the Court's docket  
9 entry, and so we believe early in the case, 2013 to 2015, he  
10 would have been the DOJ representative handling the Ham case.  
11 And he, too, was a subject of Amanda Haines' declaration for  
12 having hidden Brady evidence in United States versus Stanley  
13 Hammer, a separate capital case at that time.

14 THE COURT: Have you seen all of that early stuff?

15 MS. STOTTS: Have I seen all the early stuff? We  
16 have everything that's been done throughout this case, Your  
17 Honor, yes.

18 THE COURT: Do you have Mellin? And that's  
19 M-e-l-l-i-n. Have they seen everything he did and all the  
20 memos of his meetings?

21 MS. STOTTS: The same as with any other meetings  
22 that were conducted by the Department of Justice or the U.S.  
23 attorney's office, work product, we have not turned those  
24 handwritten notes over, no. We believe they're privileged  
25 unless they contain Brady information.



1 THE COURT: But that's it. Somebody's got to read  
2 them.

3 MS. STOTTS: Right.

4 THE COURT: But no. I don't want where they are  
5 arguing about who has to do what in the case.

6 MS. STOTTS: Your Honor, if it satisfies the Court,  
7 I will talk to Mr. Mellin and find out if he conducted any  
8 early witness interviews, has any notes that I haven't seen  
9 and make sure that we have all of those in our case files for  
10 me to review.

11 THE COURT: All right.

12 MS. STEVENS: We have seen nothing from him, Your  
13 Honor.

14 THE COURT: Well, one plausible answer is he didn't  
15 do anything.

16 MS. STOTTS: Correct, Your Honor.

17 THE COURT: And if there is something that you think  
18 might be, I could appoint a special master to look at it so  
19 even I wouldn't know what was in it unless he reported it as  
20 disclosable.

21 MS. STOTTS: Your Honor, I will speak with Mr.  
22 Mellin. I believe that your answer about the fact that he  
23 probably doesn't have anything with regard to the case and  
24 possibly had it done two months before we got Mr. Peterson  
25 may be correct, but I would like to speak with him and make

1 sure. So it was very early on in the case.

2 THE COURT: You know, the notes of the discussion  
3 about the use of the perjured testimony could have been  
4 argued to have been attorney/client privilege except  
5 committing a crime is not covered; and while not all  
6 violations of bar rules and ethics are crimes, we need to see  
7 those.

8 Yes, ma'am.

9 MS. STEVENS: The Court brings up an interesting  
10 point. The Court is correct. Where there is reason to  
11 believe the documents sought may shed light on governmental  
12 misconduct, the deliberative process privilege is and should  
13 be denied, and so hiding behind privilege may not be the  
14 right thing for them to do.

15 THE COURT: That's what I thought I just said.

16 MS. STEVENS: It is. It is what you said.

17 THE COURT: When you find the dead skunk, put it in  
18 the box addressed to her.

19 MS. STOTTS: Absolutely.

20 THE COURT: What is a CCS attorney?

21 MS. STOTTS: That's the Capital Crimes Section.

22 THE COURT: Oh, isn't that cute?

23 Do you know anything about his ethics or him  
24 being asked or asking other people to do crooked, unethical  
25 stuff?

1 MS. STOTTS: I do not, Your Honor. I don't have any  
2 information that he was doing anything crooked or dishonest.

3 THE COURT: Well, see if there are complaints by --  
4 of course, some employees would file a complaint if you asked  
5 them to work.

6 Is the Blue Book secret?

7 MS. STOTTS: I believe it is secret, Your Honor. I  
8 don't know what you mean by "secret," but it is something --

9 THE COURT: It's unread by most lawyers.

10 MS. STOTTS: It's not read by the public.

11 THE COURT: I had a case where an agency filed a  
12 200-page privilege log -- that's just a log. I suggested  
13 that they ought to rethink some of that, and so they came up  
14 with a 20-page privilege log.

15 So I appointed a retired appellate judge as a  
16 special master, and in his report he said one of the first  
17 things he found had been marked privileged was the Justice  
18 Department's letter to the agency describing what was and was  
19 not discoverable. And then he said, I used that as the  
20 standard for evaluating the rest of it, and he found four  
21 pages, not four of the 20-page log, but four pages that were  
22 probably privileged, but things that were about other cases  
23 entirely that simply had been misfiled had been marked  
24 privileged.

25 Can Ms. Stevens see a copy of the Blue Book?

1 MS. STOTTS: Your Honor, I don't even know if I can  
2 see a copy of the Blue Book. I am sure I could find one.  
3 It is privileged. Courts before you have held it was  
4 privileged, that it's not to be disseminated to defense  
5 attorneys or to the public. But I don't know --

6 THE COURT: Wait a minute. The public's an entirely  
7 different question.

8 MS. STOTTS: I understand.

9 THE COURT: Were these courts in D.C.?

10 MS. STOTTS: It's in our brief, Your Honor. I can't  
11 remember where the courts were. I have it marked somewhere.

12 Two cases that are cited in the response that  
13 we gave, one is the National Association of Criminal Defense  
14 Lawyers versus the United States Department of Justice, which  
15 is 844 F3d, 246, that says the internal Department of Justice  
16 publication known as the Blue Book constituted attorney work  
17 product because it's aimed directly for use in litigating  
18 cases.

19 There is another --

20 THE COURT: That's like having rules about what your  
21 margins are on the paper. They apply to all cases, and it's  
22 not privileged. Telling them to obey the law or to disobey  
23 the law would not be privileged.

24 I'm sorry. Keep going.

25 MS. STOTTS: I don't believe that's what the book is

1 going to say, Your Honor. Again, I can look at the Blue Book  
2 and report back to the Court.

3 THE COURT: What's the other citation?

4 MS. STOTTS: The other citation is United States V.  
5 Etlin, 134 F Supp, 2nd 59 at 89. And that says even if the  
6 discovery has proven appropriate in this case, the materials  
7 sought by the defendant Etlin are largely privileged under  
8 the attorney/client privilege, the Work Product Doctrine and  
9 the delivery of the process is privileged.

10 THE COURT: Well, I don't know what the other ones  
11 were, but you know a committee wrote it, some of whom  
12 probably weren't lawyers. And the publication of a manual  
13 doesn't sound like it's deliberative. It had to be a  
14 particular decision to be deliberative. When you write a  
15 global rule, that's not deliberative.

16 Find one, thumb through it.

17 MS. STOTTS: Yes, Your Honor.

18 THE COURT: Did the Senate committee get to look at  
19 it?

20 MS. STOTTS: I don't know.

21 THE COURT: It was discussed before the Special  
22 Council on the Senate Committee on the Judiciary.

23 MS. STOTTS: I don't have an answer to that. I  
24 don't know. I will get my hands on one to see what it  
25 entails.

1 THE COURT: If you have trouble sleeping it will  
2 probably help.

3 All right. 21. I don't want to get it  
4 sidetracked, but I think they ought to look at this since  
5 it's public now. That's the United States versus Rogers  
6 stuff.

7 MS. STOTTS: The depositions, Your Honor?

8 THE COURT: All that stuff she listed there.

9 MS. STOTTS: I believe those are still sealed and  
10 not public.

11 THE COURT: Who sealed it?

12 MS. STOTTS: The court in Rogers.

13 THE COURT: Why do these courts go around sealing  
14 everything? I am adverse to that.

15 I tried a spy, and they wanted to seal up the  
16 courtroom and seal everything. I mean, the only thing I  
17 could think, if we sealed the witness's mouths, it would  
18 shorten the whole thing.

19 We did it without a single redaction except a  
20 paragraph in a letter written by the defendant which, if the  
21 jury had read, they would have been inflamed, to say the  
22 least.

23 Well, I think then I will just request that it  
24 be unsealed for my purposes, our purposes.

25 MS. STEVENS: Thank you, Your Honor.

1 THE COURT: I don't want to read it.

2 Do you have any paralegals?

3 MS. STOTTS: I do. She is right here next to me,  
4 Melody Nelson.

5 THE COURT: I have seen her before. I just couldn't  
6 remember whether she was your keeper or --

7 MS. STOTTS: All of the above.

8 THE COURT: Same thing I said about her.

9 MS. NELSON: Thank you, Your Honor.

10 THE COURT: So some of this will depend on what we  
11 discover here. But other than these things is the government  
12 about ready?

13 MS. STOTTS: Yes, Your Honor.

14 THE COURT: And other than these things is the  
15 defense about ready?

16 MS. STEVENS: No, Your Honor. No, Your Honor. We  
17 don't know what these will --

18 THE COURT: I know that. I said other than that.

19 MS. STEVENS: We need the pathology slides, and  
20 we're just talking about the guilt/innocence portion of  
21 trial. Then there is the penalty phase, which we haven't  
22 begun discussing.

23 THE COURT: Well, couldn't we do that afterwards?

24 MS. STOTTS: Discuss the penalty phase?

25 THE COURT: I'm sorry. Do we use the same jury for

1 both?

2 MS. STOTTS: We do, Your Honor.

3 THE COURT: Do you need anything for the penalty  
4 phase?

5 MS. STOTTS: We do have witnesses and evidence for  
6 the penalty phase.

7 THE COURT: Can you briefly tell me what they are.

8 MS. STOTTS: I can briefly tell you some of them.

9 Mr. Ham has allegations of misconduct with  
10 females, ex-wives, possible -- I don't know what you would  
11 call them, not a friend but just a person he knows.

12 There is allegations with regards to his  
13 conduct as he was married and conduct in front of his  
14 children that shows a propensity for cruel acts. So we will  
15 have evidence because we have --

16 THE COURT: But we are not going to talk about  
17 gossip.

18 MS. STOTTS: No, Your Honor. We will have the  
19 witnesses here.

20 THE COURT: But real witnesses.

21 MS. STOTTS: Real witnesses.

22 THE COURT: Because lots of people testify to things  
23 they don't know but they think are -- they can't remember  
24 why, but they didn't like him, fourth grade or something.

25 MS. STOTTS: We will have the witnesses.



1 THE COURT: And how much is that, half a day?

2 MS. STOTTS: Maybe a half a day to a full day,  
3 certainly. Don't hold me to that a hundred percent.

4 THE COURT: No. I will allow you to make it shorter  
5 any time.

6 Ms. Stevens, you don't have to tell me what you  
7 have, but how much do you have?

8 MS. STEVENS: Your Honor, we aren't ready for that  
9 question yet. And I say that because there is a lot of  
10 complicated things that have to happen to get ready for the  
11 trial. So we have to decide whether we are going to put on a  
12 mental health defense at the guilt phase or not, and there is  
13 a process under Rule 12.2 for giving notice of that fact.  
14 If we do give notice of a mental health defense, that  
15 triggers filings likely by the government where they may wish  
16 to evaluate the client.

17 Also --

18 THE COURT: Wait. My question is how much of the  
19 lifestyle character kind of stuff, if we get there, do you  
20 estimate you would have? I just want a hours estimate.

21 MS. STEVENS: In trying to predict the nature of our  
22 defense, I would estimate a penalty phase would last two to  
23 three weeks.

24 THE COURT: No, it won't. The relevant testimony  
25 cannot take that long.

1 MS. STEVENS: And again, Your Honor, it depends upon  
2 the nature and the extent of mental health testimony, which  
3 we are not prepared at this moment to divulge.

4 THE COURT: Mental health testimony boils down to  
5 some records, like school misbehavior and stuff like that.  
6 And whatever a qualified psychologist is capable of opining  
7 about, if he made bad grades in school, got into fights in  
8 school, beaten by his mother, that can't be two weeks.

9 MS. STEVENS: Your Honor, that's fairly typical for  
10 a capital defense.

11 THE COURT: Ma'am, I did my best even with this case  
12 to keep it from being typical; but now as we enter into the  
13 14th year, typicality is not a reason, and we don't need it.  
14 People identify who they are, they identify the circumstances  
15 under which they knew him and what occasions they  
16 participated in that made them think X.

17 MS. STEVENS: Your Honor, when the government seeks  
18 to take a life, the issues are complicated. We will have to  
19 rebut whatever aggravating evidence they choose to put on.  
20 They have alleged future danger. They have alleged things  
21 like the Court has seen in the notice of intent about  
22 allegations for --

23 THE COURT: They allege the rule part.

24 MS. STEVENS: -- animal cruelty or things about  
25 setting fires, and we will be litigating the relevance of all

1 of that.

2 THE COURT: I don't think I am going to let the  
3 government put animal cruelty in there.

4 MS. STEVENS: We will be moving to strike a lot of  
5 that, Your Honor. There will be pretrial motions.

6 THE COURT: Just a minute. I just don't think --  
7 you're talking about a grown man, grown woman, a gun, fire  
8 ex-wives, future ex-wives, friends, enemies, if he doesn't  
9 like kittens. You have somebody that says that that  
10 generalizes?

11 MS. STOTTS: We have animal cruelty, Your Honor. We  
12 do intend to put a short portion of that on.

13 THE COURT: All right. But if you have a qualified  
14 professional that says he can generalize from adolescence  
15 animal cruelties to murder?

16 MS. STOTTS: It wasn't adolescent, Your Honor.

17 THE COURT: Preschool?

18 MS. STOTTS: No. Older.

19 THE COURT: Okay.

20 MS. STEVENS: So there will be litigation about the  
21 validity of the evidence that they're trying to put on in  
22 support of their call for death, and there is lay witness and  
23 mental health witness; and we haven't determined the nature  
24 yet, because we're working on it, of our mental health  
25 defense, either at the guilt phase, at the second phase or in

1 straight mitigation, Your Honor.

2 And we had early on proposed a schedule of  
3 events that it would take to get this case to trial, and it's  
4 complicated. There is the jury questionnaires that need to  
5 be distributed, motions filing deadline, mental health notice  
6 deadlines which may trigger a government request to evaluate  
7 the client. I don't --

8 THE COURT: When do you think you can decide? Do  
9 you need a deadline?

10 MS. STEVENS: To decide, first we need all of the  
11 discovery. Before we can make reasonable tactical decisions  
12 about trial, we need all the discovery.

13 THE COURT: You are going to get all the additional  
14 Butner information.

15 What information do you not have?

16 MS. STEVENS: The pathology slides, and we just  
17 learned the --

18 THE COURT: That's not mental health.

19 MS. STEVENS: Oh, I was talking about the guilt  
20 phase, Your Honor.

21 THE COURT: I said mental health. What other mental  
22 health do you need before you can tell me we are going to put  
23 on a mental health defense?

24 MS. STEVENS: Sure. Our experts need time to speak  
25 to lay witnesses, read records and tell us what their

1 conclusions are about him. That takes time.

2 THE COURT: And what kind of qualifications do these  
3 people have?

4 MS. STEVENS: Your Honor, if we are going to get  
5 into our defense for the penalty phase of a capital trial,  
6 respectfully I need them to leave.

7 THE COURT: No. I just want to know. Are you going  
8 to use a shaman, are you going to use a shrink or a priest?  
9 You would be surprised who is offered as a technical witness.  
10 And sometimes I don't let them use those people as that.

11 MS. STEVENS: Your Honor, we are not using a shaman  
12 or a priest, but we do expect to bring the Court the most  
13 qualified individuals we can find in their respective fields;  
14 but I can't name those fields in the presence of the  
15 government. But they are fields that the Court, I would  
16 assume, is used to working with. Nothing is non traditional  
17 that we are talking about here.

18 THE COURT: I want them to be scientifically  
19 reliable. That would make them non traditional in a lot of  
20 fields.

21 MS. STEVENS: As do we. And we are in the process  
22 of identifying and working with those folks.

23 THE COURT: All right. Well, let's get this, what  
24 we've discussed today; and I will do a written order on a  
25 couple of those things, but what I said here is binding.

1 MS. STOTTS: Yes, Your Honor.

2 THE COURT: And I will do the specifics because I am  
3 going to think about them.

4 And then you get that order and figure out a  
5 schedule that you think you could handle for what you need to  
6 do next.

7 And I assume you are not going to do anything  
8 about mental health until you find out if they are?

9 MS. STOTTS: Correct, Your Honor.

10 THE COURT: So --

11 MS. STOTTS: There is nothing we can do until we  
12 find that out.

13 THE COURT: So do identify a couple of  
14 scientifically reliable people for me so that they will know  
15 it may be coming.

16 MS. STOTTS: Yes, Your Honor.

17 THE COURT: And anything else the government needs  
18 to do other than what I said?

19 MS. STOTTS: No, Your Honor.

20 THE COURT: All right. So look at this stuff, get  
21 started on the other things.

22 Could you decide whether to have a mental  
23 health plea by August 1st?

24 MS. STEVENS: September 1st, Your Honor? We have  
25 some just getting started, which is why I asked for time.

1 THE COURT: Sure. It's a little late to rush, but I  
2 just want it to conclude justly. And until then there is  
3 nothing else for them to do unless the stuff you get from the  
4 government will reveal other problems, in which case we will  
5 get together.

6 MS. STEVENS: If I may return to the guilt phase,  
7 the forensics evidence, we do still need the pathology  
8 findings.

9 THE COURT: I said that.

10 MS. STEVENS: Yes, Your Honor.

11 And a second issue, the DNA evidence, the raw  
12 data that we had requested has been destroyed, and so we will  
13 be filing a motion about that.

14 THE COURT: Well, I can't recreate it.

15 MS. STEVENS: I know. You cannot, Your Honor. So  
16 we'll be filing a motion with regard to the DNA evidence.

17 THE COURT: Okay. If something develops that's  
18 going to further complicate or, one can always hope, simplify  
19 it, please let me know.

20 MS. STOTTS: Yes, Your Honor. Thank you.

21 MS. STEVENS: Yes, Your Honor. Thank you.

22 THE COURT: Is there anybody else who ought to be  
23 asked if they have a contribution?

24 MS. STOTTS: Not at this time.

25 MS. STEVENS: No. Thank you, Your Honor.

1 THE COURT: Thank you, ma'am.

2 MS. STOTTS: Thank you, Your Honor.

3 THE COURT: Thank you, ma'am.

4 MS. STEVENS: Thank you, Your Honor.

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7 (Conclusion of proceedings)

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## 1 CERTIFICATION

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4  
5 I, Fred Warner, Official Court Reporter for the  
6 United States District Court for the Southern District of  
7 Texas, Houston Division, do hereby certify that the foregoing  
8 pages 1 through 48 are a true and correct transcript of the  
9 proceedings had in the above-styled and numbered cause before  
10 the Honorable LYNN N. HUGHES, United States District Judge,  
11 on the 19th day of June, 2019.

12 WITNESS MY OFFICIAL HAND at my office in Houston,  
13 Harris County, Texas on this the 14th day of July, A.D.,  
14 2019.

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18  
19 /s/ Fred Warner  
20 Fred Warner, CSR  
21 Official Court Reporter  
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